

*Response Under 37 CFR § 1.116 \* -- Expedited Procedure - Examining Group 3739*  
Serial Number: 10/046,573  
Docket No.: 1242.002A

### REMARKS

Reconsideration of the application and allowance of all claims pending herein is respectfully requested in view of the remarks below. Claims 1-12 are pending.

#### **Interview with Examiner:**

Initially, applicant gratefully acknowledges the allowance of claims 1-5 and 8-11. Further, applicant acknowledges the time granted its undersigned representative on November 12, 2004, in which claim 6 and the Lichman reference were discussed. Applicant submits this paper in response to, and in accordance with, the substance of this conversation.

#### Rejections Under § 102:

Claims 6-7 and 12 continue to be rejected 35 U.S.C. § 102(b) as being anticipated by Lichman (U.S. Patent No. 5,620,549). Claim 6 recites, *inter alia*, a method of ratcheting the closure of a pair of jaws of an endoscopic grasping tool surgical instrument which includes providing a handle having a drive head which has teeth formed thereon, and providing a pawl positioned for engagement with the teeth to prevent proximal movement of the drive head after it has moved distally.

Lichman discloses a surgical instrument including a handle 14 having gear teeth 38 thereon which engage gear rack teeth 40 of a gear rack tube 36 (alleged to be a drive head in the Office Action) as depicted in FIG. 9, for example. By moving handle 14 about a pivot pin 18, gear teeth 38 engage with gear rack teeth 40 and cause movement of gear rack 36 to cause movement of outer tube 8 which may envelope jaws 4 and 6 to cause closure thereof, as described in column 7. Also, gear rack tube 36 may include teeth 71 on a top portion thereof which are engaged by a pawl 73 to obstruct rearward movement of gear rack 36. However, as discussed in the above referenced telephone conversation, there is no disclosure in this reference of a handle which has a drive head which includes teeth formed thereon nor a pawl positioned to engage the teeth to prevent proximal movement of the drive head after it has moved distally.

Instead, Lichman discloses pawl 73 engageable with tube 36 that is separately engageable with teeth 38 of handle 14, but handle 14 itself does not have teeth thereon which are engageable with the pawl. Further, teeth 38 on handle 14 in Lichman are engageable with teeth 40 of gear rack 36 and pawl 73 is engageable with the top portion of gear rack tube 36 that has teeth thereon, but there is no disclosure of teeth on a drive head nor a pawl positioned to engage the teeth to prevent proximal movement of a drive

*Response Under 37 CFR § 1.116 \* -- Expedited Procedure -- Examining Group 3739*  
Serial Number: 10/046,573  
Docket No.: 1242.0024

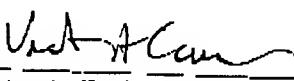
head after it is moved distally. Accordingly, because the features of claim 6 of the present application (e.g., a handle including a drive head having teeth formed thereon and a pawl positioned to engage the teeth to prevent proximal movement of the drive head after it has moved distally) are not identically disclosed by Lichtman, claim 6 cannot be anticipated by this reference. Thus, claim 6 is believed to be allowable along with dependent claim 7, which is believed to be allowable for the same reasons and for the own additional feature of a pawl having unequal length tines. Claim 12 is believed to be allowable for the same reasons as claim 6 and those of claim 7.

### CONCLUSION

It is believed that the application is in condition for allowance, and such action is respectfully requested.

If a telephone conference would be of assistance in advancing prosecution of the subject application, Applicant's undersigned attorney invites the Examiner to telephone him at the number provided.

*Respectfully submitted,*

  
\_\_\_\_\_  
Victor A. Cardona, Esq.  
Attorney for Applicant(s)  
Registration No. 44,589

Dated: December 8, 2004

**HESLIN ROTHENBERG FARLEY & MESITI, P.C.**  
5 Columbia Circle  
Albany, New York 12203  
Telephone: (518) 452-5600  
Facsimile: (518) 452-5579